

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF ARKANSAS
3 FORT SMITH DIVISION

4 UNITED STATES OF AMERICA PLAINTIFF

5 v. CASE NO. 2:20-CR-20015

6 JASON D'JUAN GARFIELD DEFENDANT

7 -----
8 SENTENCING HEARING

9 MAY 26, 2021

10 BEFORE THE HONORABLE P.K. HOLMES, III

11 UNITED STATES DISTRICT JUDGE

12 FORT SMITH, ARKANSAS
13 -----

14 A P P E A R A N C E S

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1 THE COURT: We're here this morning for a
2 sentencing matter in the United States versus Jason D'Juan
3 Garfield, Case Number 2:20-CR-20015-001.

4 The defendant is present with his attorney,
5 Mr. James Pierce. The government is represented by
6 Assistant United States Attorney Aaron Jennen.

7 Parties ready to proceed?

8 MR. JENNEN: Yes, Your Honor.

9 MR. PIERCE: Yes, Your Honor.

10 THE COURT: Mr. Jennen, you can take your mask
11 off.

12 MR. JENNEN: Thank you, Your Honor.

13 THE COURT: I'll just tell the folks in the
14 courtroom, there's going to be a new order entered today, a
15 new administrative order by Judge Hickey, who is the Chief
16 Judge, regarding the wearing of masks. And basically just
17 to briefly summarize that particular order, it's going to
18 say that individuals who have been vaccinated do not have
19 to wear a mask in the courthouse. Social distancing,
20 though, is still going to be required.

21 And then secondly, if a person has not been
22 vaccinated or chooses not to answer the question whether or
23 not they have been vaccinated will have to wear a mask.
24 And that's the policy that we will have.

25 So, Mr. Pierce, I'll allow Mr. Garfield to take

1 his mask off because he will need to testify as well.

2 Again, the government is ready to proceed?

3 MR. JENNEN: Yes, Your Honor.

4 THE COURT: Defendant ready to proceed?

5 MR. PIERCE: Yes, Your Honor.

6 THE COURT: Okay. I'm first going to state the
7 procedural history of this case.

8 Mr. Garfield was originally arrested on a
9 criminal complaint. The parties entered into a plea
10 agreement by which Mr. Garfield would waive indictment and
11 plead to an information. However, the Court was unable to
12 set a waiver of indictment/change of plea hearing before
13 the Grand Jury convened, so the government presented the
14 case to the Grand Jury which returned an indictment on the
15 same counts in the information. In other words, the
16 information and the indictment are identical.

17 Is that correct, Mr. Jennen?

18 MR. JENNEN: Yes, Your Honor.

19 THE COURT: Good. Now, on August the 5th of
20 2020, Mr. Garfield appeared with Mr. Pierce before this
21 Court. At that time, he waived the right to be charged by
22 an indictment and consented to the filing of an information
23 charging him with one count of possession of a machine gun,
24 one count of possession of an unregistered silencer, and
25 one count of possession by a prohibited person. The

1 information also included a forfeiture allegation.

2 Mr. Garfield pled guilty to the information pursuant to the
3 terms of a written plea agreement.

4 Now, Mr. Garfield, I need to just ask you a
5 couple of questions. The first one I'm going to ask you,
6 have you been satisfied with the counsel, the
7 representation, and the advice that you have received from
8 your attorney, Mr. Pierce?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. A presentence investigation
11 report was prepared in this matter on September the 23rd of
12 2020, and a final report was filed on October 13 of 2020.

13 Mr. Garfield, did you have an opportunity to
14 review and to read this presentence investigation report
15 and discuss it with your lawyer, Mr. Pierce?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Good. And Mr. Pierce and Mr. Jennen,
18 have you both reviewed the presentence investigation report
19 including any revisions that may have been made to that
20 report after the initial disclosure?

21 MR. PIERCE: Yes, Your Honor.

22 MR. JENNEN: Yes, Your Honor.

23 THE COURT: Good. And the defendant had no
24 objections and the government had no objections to the
25 original presentence investigation report, so the Court

1 will adopt the final presentence investigation report as
2 filed.

3 Now, at this time, I'm going to set forth what
4 the sentencing options are in the case. These are the
5 statutory penalties that apply to the counts in the
6 information.

7 There are three separate counts, as I mentioned.
8 The statutory penalties applicable on Count One are the
9 maximum term of imprisonment of 10 years, a term of
10 supervised release of not more than three years, a maximum
11 fine of \$250,000 and a mandatory special assessment of
12 \$100.

13 Now, the statutory maximum penalties on Count Two
14 of the information include a term of imprisonment, maximum
15 term of imprisonment of 10 years, a term of supervised
16 release of not more than three years, a maximum fine of
17 \$10,000, and a special assessment of \$100.

18 For Count Three of the information, the maximum
19 term of imprisonment is 10 years, a term of supervised
20 release of not more than three years, a maximum fine of
21 \$250,000, and a mandatory special assessment of \$100.

22 Essentially, the statutory maximums are the same
23 for Counts 1 and 3 and for Count -- excuse me -- 1 and 3,
24 and then Count 2 is differently. Mainly the maximum fine
25 is the difference between those regarding the statutory

1 penalties.

2 Now, the United States Sentencing Guidelines are
3 advisory. I've consulted those guidelines in determining
4 the sentence to impose, but recognize that I have the
5 authority to depart or vary from that recommendation in the
6 sentencing guidelines.

7 At this time, I'm going to do a guideline
8 calculation. I'm going to follow the presentence report
9 and go through my own guideline calculation. Under
10 3D1.2(d), Counts 1, 2 and 3 are grouped for guideline
11 purposes. In other words, they are considered together.
12 Under 2K2.1, the base offense level is a level 20. Because
13 the defendant possessed 13 firearms, the offense level is
14 increased by four levels.

15 Now, the probation office in the presentence
16 investigation report awarded the defendant a two-level
17 reduction for acceptance of responsibility. I've read the
18 presentence investigation report and I've concluded, after
19 reading it, that this defendant has not accepted
20 responsibility for his criminal conduct, so I'm not going
21 to give the defendant a two-level reduction for acceptance
22 of responsibility, nor does the government need to move for
23 an additional downward -- for an additional motion for
24 additional points since I'm not going to award the
25 two-level reduction for acceptance of responsibility.

1 I base that not only on the offense conduct, but
2 also looking at paragraph 98 of the presentence
3 investigation report. The defendant entered a plea of
4 guilty in the case on advice of counsel. Defendant
5 acknowledged the conduct, expressed agreement with the
6 factual basis presented to the Court at the time of the
7 change of plea.

8 And basically I disagree with the probation
9 officer. She said just the fact that he pled guilty, that
10 was sufficient for him to accept responsibility. I don't
11 see anything, particularly in this offense conduct, or any
12 other statement that would entitle him to a two-level
13 reduction for acceptance of responsibility. Therefore,
14 it's the Court's view that the offense level is a level 24.

15 Criminal history category, he has one criminal
16 history point, which places him in Category I, so the
17 guidelines recommend the following sentence:

18 A term of imprisonment of 51 to 63 months, a term
19 of supervised release of one to three years, a fine in the
20 range of 20,000 to 200,000, and then a mandatory special
21 assessment of \$300. That's \$100 on each count.

22 So now in calculating and determining the
23 sentence that the Court is to impose, the Court is going to
24 base it on the factors found in Title 18 United States Code
25 Section 3553(a). That is, the nature and the circumstances

1 of the offense. The defendant's history and
2 characteristics. The sentencing range under the guidelines
3 of 51 to 63 months. And the need to avoid unwarranted
4 sentence disparities among defendants who have similar
5 records and have been found guilty of similar conduct.

6 Now, the Court is considering an upward variance
7 in the case based on the offense conduct. And so at this
8 time, I'll ask Mr. Jennen if he has any comments regarding
9 what sentence the Court should impose.

10 MR. JENNEN: Thank you, Your Honor.

11 Your Honor, as outlined in the government's
12 sentencing memorandum, the government has asked this Court
13 to apply a seven-level upward departure. And as the Court
14 knows, the basis for that is two-fold. First, the
15 government believes there are aggravating circumstances of
16 a kind and to a degree not adequately taken into
17 consideration by the sentencing guidelines.

18 And two, the government believes the offense
19 conduct was calculated to influence or affect the conduct
20 of the government by intimidation or coercion, or to
21 retaliate against government conduct.

22 As is very clear from the offense conduct section
23 of the PSR, there is substantial aggravating factors not
24 accounted for in the sentencing guidelines. First, the
25 firearms he has been convicted of possessing were obtained

1 for his repeated stated purpose of committing acts of
2 violence against religious, racial and ethnic minorities,
3 and as well as to carry out mass casualty attacks. I'm not
4 going to reiterate the facts in support of the government's
5 argument here, Your Honor, as I think they are sufficiently
6 outlined and I know the government has reviewed the
7 sentencing memorandum.

8 THE COURT: The probation officer, this
9 particular probation officer always does a very good job.

10 MR. JENNEN: Yes, Your Honor.

11 THE COURT: And she has done the best job of
12 laying out the offense conduct, some of the best I've seen.
13 And it's laid out extensively very well. And the Court
14 understands it and has read it many times.

15 MR. JENNEN: Yes, Your Honor. And the facts in
16 the presentence report the government relied upon are
17 summarized in pages 3 through 4 of its sentencing
18 memorandum.

19 Number two, Your Honor, the facts in the PSR also
20 show that the defendant sought to influence a high school
21 student to ascribe to his ideals of white supremacy, as
22 well as to participate in acts of violence and terrorism
23 against racial, ethnic, and religious minorities.

24 Three, the defendant made clear his wish to
25 recruit other individuals to join him in a perceived

1 imminent race war with a preference for young adults aged
2 18 to 20 years old.

3 Your Honor, these aggravating factors highlighted
4 by the government now and in its sentencing memorandum as
5 well as contained in the presentence investigation report
6 are not accounted for in the guidelines, and pursuant to
7 5K2.0 warrant, we believe, a seven-level upward departure.

8 THE COURT: Let me -- I don't have the sentencing
9 memorandum in your book here. Could you tell me what -- we
10 don't have a sentencing memorandum on the docket.

11 Did you file a sentencing memorandum?

12 MR. JENNEN: Yes, Your Honor.

13 MR. PIERCE: Your Honor, it's filed under seal.

14 (pause)

15 THE COURT: Okay. Thank you, Mr. Jennen.

16 MR. JENNEN: Yes, Your Honor.

17 Your Honor, the government also contends in
18 addition to Subsection 5K2.0 that the seven-level upward
19 departure is also warranted based upon application note 4
20 to Section 3A1.4, the terrorism enhancements guideline.
21 The note, application note 4 to that guideline states that,
22 "An upward departure is warranted when the offense of
23 conviction is not a federal crime of terrorism" -- which
24 the defendant has not been convicted of -- "but the conduct
25 was calculated to influence or affect the conduct of

1 government by intimidation or coercion or to retaliate
2 against government conduct."

3 As the Court is well aware from the offense
4 conduct in the PSR, the defendant repeatedly stated that
5 his purpose for obtaining and stockpiling weapons and
6 manufacturing machine guns was in preparation for what he
7 believed to be an imminent race war. He discussed
8 overtaking an Air Force base. The defendant expressed his
9 desires to replicate the Oklahoma City bombing carried out
10 by Timothy McVeigh of the Alfred P. Murrah Federal
11 Building. The defendant discussed carrying out attacks on
12 ATF headquarters in Washington, D.C. The defendant talked
13 about his willingness to assassinate the Governor of
14 Virginia for prohibiting firearms on public grounds. The
15 defendant also discussed his interest in carrying out an
16 attack of a black Arkansas State Senator.

17 His fiancée, as related in the presentence
18 investigation report, Ms. Kaytlyn Tippet, explained to law
19 enforcement that the defendant idolized Adolf Hitler and
20 Brenton Tarrant, the Christchurch New Zealand mosque
21 shooter, because -- and the quote is, to quote her -- "The
22 United States government was not doing anything about
23 people coming in and trying to take over the country."

24 The government argues that the facts contained in
25 the presentence investigation report show that the

1 defendant's offense conduct was calculated to influence or
2 affect the conduct of government by intimidation or
3 coercion or to retaliate against the government conduct.
4 And for that reason, the Court should apply the requested
5 seven-level upward departure.

6 All that said, the Court should apply a
7 seven-level upward departure with the resulting guideline
8 range of, it was 78 to 97 months, but with the additional
9 three levels because the Court did not award acceptance of
10 responsibility, the resulting guideline range, Your Honor,
11 would be 108 to 135 months.

12 The defendant argues in his sentencing memorandum
13 that the Court should not apply an upward departure of any
14 kind because the defendant is, quote, "young, has very
15 little criminal history, and has never been incarcerated
16 before." The government agrees that those things are
17 mitigating facts. However, the aggravating factors in the
18 government's opinion greatly outweigh the mitigating
19 evidence present in this case.

20 The government would also point out that in
21 preparation for this sentencing hearing, the defendant
22 discussed his history and offense conduct with Dr. Sam
23 Wallace, which is found in the exhibit to the sentencing
24 memorandum at Document 43-2. During that, the defendant
25 stated that he became radicalized on "4 Chan" and, quote,

1 "The information he obtained confirmed his personal
2 beliefs." That's at page 9.

3 The defendant stated that he only cares about
4 his, quote, "own people." Again at page 9. Dr. Wallace
5 related that the defendant, quote, "Described his anger at
6 a small group of people exerting power over others and
7 noted that Jews own the news media and the banks." Again
8 at page 9. The defendant told Dr. Wallace that he did not
9 like black people and said that, quote, "They act like
10 retards." And they are, quote, "All the same," adding, as
11 the Doctor described with a frustrated tone, "Have you ever
12 been around them?"

13 Even after being convicted of firearms offenses,
14 the defendant maintains that he should be able to possess
15 weapons because, quote, "The world is going to expletive,
16 and that he shouldn't just lay there and take it." That's
17 at page 9 as well, Your Honor. The defendant said there
18 was, quote, "Nothing wrong with his idolization of Brenton
19 Tarrant," the Christchurch New Zealand mosque shooter.
20 That's at Page 10. The defendant defended his belief in
21 accelerationism and stated that he was not willing to,
22 quote, "Sit there and expletive take it." That's at
23 page 10 as well.

24 Your Honor, the government would note that all of
25 these statements were made after he had pled guilty and

1 knowing that this Court would soon be pronouncing sentence
2 and that the purpose of that interview was for sentencing
3 evidence.

4 Most disturbing to the government is
5 Dr. Wallace's statement that, "Contrary to the defendant's
6 claims that his repeated statements regarding his desire to
7 commit violent acts against minorities were" -- in his
8 words -- "dark humor," that Mr. Wallace determined, quote,
9 "He cannot ascertain the validity of his report that his
10 commentary regarding violence against various groups of
11 people were fiction and for entertainment versus genuine
12 threat." That's scary, Your Honor.

13 Based upon all that and based upon all the
14 evidence before the Court at this time, and in light of the
15 3553(a) factors, the government would argue that the Court
16 should apply a seven-level upward departure and sentence
17 the defendant to a guideline sentence in the resulting
18 guideline range. Thank you.

19 THE COURT: Thank you, Mr. Jennen. Mr. Pierce?

20 MR. PIERCE: Thank you, Your Honor.

21 Your Honor, in preparing for today, I've been
22 thinking a lot about working with Mr. Garfield. He has
23 been in custody since March of last year, over 14 months.
24 And I have come to know Mr. Garfield in a way that's a
25 little unusual simply because of the amount of time that we

1 spent, but also because he's very young. And I've seen him
2 change, and I've seen his attitude change during the period
3 of time that I've been working with him. And I think that
4 the Court should seriously listen to what he has to say
5 when I'm done today. I know in advance --

6 THE COURT: Of course, what you're telling me now
7 is based on interviews you have had with him. There is
8 nothing in the record that expresses -- I'll give him the
9 right to allocute here in a moment after you have your
10 time. But, I mean, this is some of the most reprehensible,
11 horrific conduct I've seen since I've been on the bench.
12 And then when he says he was just -- anybody who believes
13 that just -- is just -- I was just joking. It's just
14 astounding that that would be the response that he would
15 have in an interview about this. I can't really -- I mean,
16 I'm going to refer to that part of the PSR because I meant
17 to mention that a minute ago when I denied his acceptance
18 of responsibility.

19 "Only a fool would take them as serious." Only a
20 fool. He may think I'm a fool here. I don't care what he
21 thinks of me. But I'm reading this. This is the some of
22 the most horrific, reprehensible conduct I've seen. He's
23 lucky that the statutory maximum is 10 years. It's the
24 Court's view that the statutory maximum penalties on some
25 of these offenses, firearms offenses is just too low. But

1 Congress gets to decide that, not me. So go ahead.

2 MR. PIERCE: Thank you, Your Honor.

3 Your Honor, as I was saying, I've gotten to know
4 Mr. Garfield, and I have seen a change in him during the 14
5 months that I've gotten to know him. And I want the Court
6 to think about that. I understand the conduct is very
7 reprehensible. It is what it is. It's black and white.
8 We can see it. We have gone over it. It's one of the
9 longest presentence reports I've ever seen for a gentleman
10 in a criminal history Category I.

11 What I found incredible here is the idea that
12 this young man, who was 21 years old when this activity
13 started, is still young and his mind is not fully formed or
14 developed. We know that, Your Honor. It's almost -- I
15 think the Court can even take judicial notice of the
16 insurance industry says that young males have a high
17 insurance risk until they're 25 years old. There's a
18 reason for that, because their minds are not fully formed.
19 We see that all the time in drug cases.

20 THE COURT: You know, I don't take that as an
21 excuse. This United States Capitol was full of
22 20-year-olds, and they are breaking down, violating the
23 law. Someone who is that age ought to know the difference
24 between right and wrong, ought to know what's a violation
25 of the law and what's not a violation of the law.

1 The real mitigating factor for him, he had -- the
2 offense conduct is horrific. He had a pretty horrific
3 background growing up.

4 MR. PIERCE: Yes, Your Honor.

5 THE COURT: And that may have formed some of his
6 views on life. It's awful. It's unfortunate some children
7 who grow up in that type of atmosphere don't have a chance,
8 and it's not because of their own making. But they reach
9 an age at some point in time they have to make a choice in
10 life of what they are going to do.

11 MR. PIERCE: And I understand that, Your Honor.

12 Let me move to, shift to that. When he described
13 his growing up and his childhood as horrific is an
14 understatement. And I have heard with many defendants,
15 many of my clients describe their childhoods. I've never
16 heard of anyone like this one before. That is horrific.
17 And what do we expect will happen to someone who is brought
18 up in those consequences? What do we expect their
19 attitudes and their perceptions to become when, at six
20 years old, he's shown pornography. Before he's eight years
21 old, he's already been sexually violated by a man who they
22 tell him that's his father, and it's not.

23 His stepfather was a black man. His stepfather's
24 name is on his birth certificate, is my understanding. The
25 biological father was gone. And mama was using any ability

1 for any stability that she could have, even with the
2 gentleman who turned out to be her pimp. There were drugs
3 in the home. She was a prostitute. That's all in the
4 report, Your Honor. And that's starting at four years old,
5 five years old, six, eight.

6 Then at some point, the stepfather is out of the
7 picture, and another gentleman, Mr. Carr comes in. And
8 this is all covered in the sentencing memorandum and
9 Dr. Wallace's report, as well as the presentence report.
10 And he thought, well, maybe Mr. Carr will be better to me.
11 They played video games and got along. But over time,
12 Mr. Carr physically assaulted him. Mr. Carr sexually
13 assaulted him.

14 You know, Your Honor, the government is real
15 concerned about influenced young people. Where was their
16 concern when he was six years old? When he was eight years
17 old? When he was 10 years old? When he was 14, 16, 18,
18 where was the government then? Mama finally gets to the
19 point she can no longer contain Mr. Garfield, so she has a
20 protective order issued against him. And that's all
21 covered in the report. And he finally gets old enough and
22 big enough where he's like, I've had it. And he's living
23 on the streets. He's living with friends, even with
24 teachers or anyone who will put him up for a while. Yet he
25 still graduated high school.

1 Do we really think, are we naive enough to think,
2 that growing up in that kind of situation is going to lead
3 to a normal thinking or judgmental process? It's not. I
4 consider myself so lucky. I had two loving parents. I
5 grew up with them. They gave me some degree of
6 individualization. And I'm so thankful I had that. That's
7 something he'll never have. He'll never even be given the
8 chance to go back to something like that. And yet we
9 scratch our heads and think, how did he end up being so
10 radicalized?

11 I think Dr. Wallace really hits the nail with the
12 hammer when he says, he needs counseling, he needs
13 treatment, he may need pharmacological intervention. But
14 the one thing Dr. Wallace told me when I reviewed the
15 report with him in anticipation of a hearing today, he
16 said, the one thing I can tell you, Mr. Pierce, is
17 Mr. Garfield is still capable of meaningful change. Still
18 capable of meaningful change. What makes that statement so
19 critical here is that Mr. Garfield really has nowhere else
20 to go. He's pretty much hit rock bottom. He's lost his
21 family. He's lost his rights. He's losing his liberty.
22 What else can we do for him? Do we just punish him for his
23 ideas? Yes, those were ideas. They were bad ideas. But
24 you know what? So was the other people involved in those
25 conversations.

1 Mr. Garfield was 21 when he got involved with
2 some of these conversations. That's when it was
3 discovered, but it goes back before then. Whatever
4 happened to James Wisdom? Nothing. Why not? He had
5 violent rhetoric. He was goading back and forth. Nothing
6 ever happened with him. What about Mr. Pelts? Now,
7 Mr. Pelts was sentenced before this Court for buying him a
8 firearm back in February. But wasn't Mr. Pelts the one who
9 created the "Right Wing Death Squad" chat page on Facebook?
10 Wasn't it him? That's what it says. That's what he told
11 people. And yet Mr. Pelts, he gets 24 months of probation.

12 Now, I understand that's a different crime. I
13 understand that. But the rhetoric is still the same. Why
14 are we going to punish him --

15 THE COURT: I tell you on Pelts, I went through
16 and analyzed all those Facebook messages about who was
17 making the statements and who was responding and so forth.
18 I gave careful consideration to that, as much as I have to
19 this case too.

20 MR. PIERCE: And I appreciate that, Your Honor.

21 But there are other individuals who have never
22 been charged with anything. And I'm not saying they should
23 or shouldn't be. That's the government's job. They get to
24 pick and choose who they want to go after and who they want
25 to leave alone. I understand that. But he's a target.

1 He's a huge target with a target on his back. It just
2 seems -- it just seems incredible to me that as
3 reprehensible as the behavior is, that society has gotten
4 to the point that we are just going to warehouse him away
5 and just take away his freedoms for protection of the
6 public for something that came across as an idea, not as a
7 deed.

8 Now, the deeds? Okay, he had -- he made machine
9 guns. The deeds, he had a silencer. The deeds, he had
10 guns he shouldn't have had. He understands all those
11 things. He understands he's got to be punished for all
12 those things. But at what point do we draw the line and
13 say, this punishment is sufficient, but not greater than
14 necessary. And that's where I'm having a hard problem
15 here, Judge. I understand -- you know, Judge, I don't envy
16 you, because this is going to be a hard case, to me. Maybe
17 it's not. Maybe I'm being naive.

18 THE COURT: No, it's a very difficult one. In
19 fact, these are some of the cases I could easily have done
20 by videoconferencing, but after reading the PSR in this
21 case, I decided that this needed to be an in-court
22 sentencing hearing.

23 MR. PIERCE: And I appreciate that, Your Honor.
24 I think that body language helps us understand a lot, not
25 just the words. I mean, you can't see much when you only

1 see this much. You can't get much out of the
2 communication.

3 Your Honor, I could go on, but let me just
4 summarize it this way. Mr. Garfield is now, he's now 23.
5 That's all. He's just 23 years old. This conduct happened
6 when he was 19, 20, 21. But since 21, he's been in
7 custody. His 22nd birthday was in custody over this
8 behavior. And I submit to the Court that his description
9 to Dr. Wallace was really more of a historical note, not so
10 much as, "This is how I still feel." I'll let him tell you
11 what he feels. But when Dr. Wallace -- and I find it
12 incredible that the government is going to use the
13 statements that my client gives to his doctor to try to get
14 treatment, to try to understand why does he think the way
15 he thinks, against him as an enhancement for sentence.
16 That's going to chill anyone who wants treatment. They are
17 just going to say, "I'm just going to say nothing."

18 I submit that that's more historical data than
19 how he currently feels. I'll let him tell you for himself
20 what he feels. I mean, I'm not going to jump in his shoes.
21 I want him to explain that for you, Your Honor. But I
22 think any upward variance is unneeded. I think I have that
23 the range -- I originally thought --

24 THE COURT: Frankly, I'm appalled at the
25 sentencing range for what the offense conduct is. I mean,

1 I knew when I read this, I knew I was going to do an upward
2 variance. I mean, the offense conduct is not -- you just
3 cannot explain it away. I mean, here is somebody who knew
4 he could not possess a firearm, and other individuals
5 acquired firearms for him. Not only did he just acquire
6 firearms, he made them fully automatic, made them machine
7 guns, had a silencer.

8 MR. PIERCE: Yes, Your Honor.

9 THE COURT: I mean, these firearms offenses are
10 some of the worst I've seen. I mean, you take somebody who
11 is convicted of a felony that goes out there and has a
12 9 millimeter just because they are going to use it to
13 protect their drug trade is far different from someone who
14 has these ideas about race wars and so forth and converts
15 AR-15s into fully automatic weapons and talks about
16 training out in the field, and talks about doing a
17 "McVeigh" at the courthouse in Little Rock.

18 I don't know what drove this young man into this
19 thinking. There's no question that his background set him
20 up for this. But I tell you another view I had. He's
21 probably a fully intelligent individual.

22 MR. PIERCE: I believe that, Judge.

23 THE COURT: I don't think this guy is dumb at
24 all. I think he's probably highly intelligent, and he knew
25 what he was doing.

1 MR. PIERCE: Your Honor, I agree with --

2 THE COURT: This is one of these more difficult
3 cases where the -- I've got some of them tomorrow too.
4 They're just difficult when the Court has responsibility of
5 figuring out under 3553(a) where to lay the sentence. It's
6 not easy to do.

7 MR. PIERCE: Well, Your Honor, although I may
8 disagree with the Court by denying Mr. Garfield acceptance
9 of responsibility, I would submit that that is enough of an
10 upward departure for Mr. Garfield, because his range is now
11 51 to 63 months. That's over four years to over five
12 years, for a person who has never had a felony before.
13 He's had a misdemeanor, but he's never had a felony before.

14 His prohibited person conduct was the mental
15 illness that he had with the altercation with this mother
16 who we discussed ad nauseum. So, Your Honor, I submit to
17 the Court that an upward variance of seven levels is just
18 overly punitive. It's not needed. And where he needs to
19 be is in a diagnostic or a medical unit that can address
20 his needs. Again, Dr. Wallace said he is still capable of
21 meaningful change. He's still 23.

22 When he's released, Judge -- because he will be
23 released at some point -- he's going to be on supervision.
24 There are going to be rules for that. We can monitor his
25 progress once he's released. And if there's any problems

1 at all --

2 THE COURT: That's really one thing that astounds
3 me about the statute is the statutory maximum supervised
4 release is three years. I put people on supervised release
5 for five and 10 years all the time because it's necessary
6 to protect the public from further crimes. This is just
7 three years.

8 MR. PIERCE: But that's still three years, Your
9 Honor. Your Honor, even at the low end, he's going to be
10 in his 30s before he's released off of everything. Before
11 he makes his term of incarceration, before he meets his --
12 finishes his term of supervision, he's going to be in his
13 30s. What kind of person are we going to make him into
14 from here? That's all that I have, Your Honor.

15 THE COURT: Okay. Thank you, Mr. Pierce. You
16 did a good job. Your job is to be an advocate and you do
17 it well.

18 MR. PIERCE: Well, thank you.

19 THE COURT: Now, Mr. Garfield, you can remain
20 seated there, but I'm going to give you an opportunity to
21 speak. You've heard a lot going on here today. I want you
22 to take the time to say whatever you wish to say in your
23 allocution.

24 THE DEFENDANT: Thank you, Your Honor.

25 Your Honor, I'd like to start by simply

1 acknowledging that I was in the wrong. I know there's been
2 some back and forth over whether I really accepted
3 responsibility over it. But I'd like to say that group
4 think is a real thing, and that being away from the groups
5 I was a part of for the last 14, going on 15 months, it
6 has -- that time to reflect, I can really see where it's --
7 it was definitely bad, as you said, heinous. Sorry. I'm
8 going to just write --

9 THE COURT: That's okay. I want you to --
10 Mr. Garfield, I want you to take your time. I know you've
11 written some things up. But just relax, because I want to
12 hear from you. Also, that microphone, don't get too close
13 to it, but anyway, I want to make sure I can understand
14 you.

15 THE DEFENDANT: All right. I know that as it
16 stands right now, my mark on the world was -- well, for
17 lack of a better word, it's bad. What I said and thought
18 was downright disgusting at times. You've seen the
19 conversations between several people in my group chats.
20 And I've disappointed everyone so far. Lost, as it stands,
21 I've lost almost everything, some of my closest friends
22 from third and fourth grade and up. Lost a job and all my
23 transportation. Lost my congregation at church. The type
24 of people that I'm not going to get back.

25 I didn't really -- I had just found my family

1 about a little over a year before my arrest. Well, a year
2 and a half. We are products of our environments. A lot of
3 the beliefs that I've had, issues I still have, I mean,
4 lived in a hostile environment in a constant state of
5 paranoia, 23 years. So some of those memories are --

6 Now, after all this, whatever the Court decides
7 to do with me, when I come out of it, I'm going to have a
8 criminal record. That is not going to go away. I don't
9 see myself getting a pardon for that, ever. It's going to
10 make my life harder finding employment. I know it's easier
11 these days than it was 20 years ago for a felon, but I
12 think the nature of my case is going to cause a hindrance.

13 I'm scared of becoming like my biological father
14 that as you know spent several years in federal prisons.
15 Never met the man. Talked to him on the phone a few times.
16 And I don't know what happened with him.

17 My second stepfather and most of his friends
18 spent years in prison, and I've seen firsthand what doing
19 long periods of time incarcerated did to them. They
20 couldn't hold down jobs, couldn't really function. Second
21 stepfather ended up sexually assaulting me. And part of it
22 was, in one conversation we had, it was over -- it led me
23 to believe that being in prison caused him to do that. But
24 it wasn't his first time.

25 I'm locked in my cell for 23 hours a day, have an

1 hour out to take a shower, call my family when I can. So
2 most of my day is spent thinking. Thinking that if I had
3 made -- if I had made an effort to get away from
4 everything, to try and better myself, to take
5 responsibility, be a better person for my family and
6 myself, that this could be a totally different situation
7 right now. I could have been married already, hold my
8 first child, not having to worry about what they are going
9 to go through as they grow up. Knowing that I can steer
10 them away from the direction that I've been in. That --
11 sorry.

12 All I've ever wanted in life is a family that
13 will love me for who I am. And I've let them down,
14 disappointed them greatly. I have to try and come back
15 from that. And I'm worried if I will be able to after all
16 this is said and done. If I will be able to be a
17 productive member of society and take care of myself and do
18 what's right. And hopefully be able to help people that
19 are in my shoes, help steer them in the right direction,
20 keep them from making these choices, because it's -- there
21 is a point of no return on it, as we see throughout
22 history. And I am sort of thankful that I am here now,
23 that things couldn't escalate and I reach that point of no
24 return, that I am able to step back and see it and have a
25 better understanding.

1 Your Honor, I just hope I have the opportunity to
2 do what's right, make things right before it's too late.
3 That's all, Your Honor.

4 THE COURT: Okay. I just want to make one
5 comment, then I need to ask Mr. Jennen a question.

6 You just confirmed to me that you're a bright,
7 intelligent individual. I don't know if you wrote that
8 yourself or your lawyer helped you or whatever, but it's
9 very well written. You expressed yourself very well. In
10 fact, you've expressed yourself much better than most
11 defendants that come here to the courtroom. Most of them
12 come in here and say, "I'm sorry for taking the Court's
13 time," or some answer like that. But you're a bright
14 individual. And I'm going to impose sentence here
15 momentarily, and I don't know if you are going to be able
16 to rehabilitate yourself or not. Prison is not the easiest
17 place to be rehabilitated. But, I mean, courts have to
18 impose sentence that shows respect for the law, that shows
19 just punishment for the offense that occurred, so I'm going
20 to go through those in a moment. But anyway, I appreciate
21 your comments.

22 What I need to clear up, Mr. Jennen, did you move
23 for upward departure, or are you just moving for upward
24 variance?

25 MR. JENNEN: An upward departure, Your Honor.

1 THE COURT: So there's a motion pending and I
2 need to rule on that motion?

3 MR. JENNEN: Yes, Your Honor.

4 THE COURT: That's clear. My law clerk picked
5 that out for me. So often, the way the guidelines work and
6 the way sentencing works under the 3553(a) factors, we so
7 often deal with these issues with variances as opposed to
8 departures. But a departure is, under the guidelines, an
9 option for either party to move for a departure based on
10 the guideline calculation.

11 But in any event, I need to rule on that motion
12 for the record. I'm going to deny the motion for an upward
13 departure. And as I mentioned, I am considering an upward
14 variance based on the 3553(a) factors.

15 So having ruled on that motion, again, the
16 guideline range that I calculated is 51 to 63 months. And
17 the guideline range is one of the factors that the Court
18 takes into account in imposing the sentence.

19 Let me discuss the 3553(a) factors. And I'm not
20 going to discuss them in much greater detail because I've
21 already actually mentioned them quite a bit during the
22 discourse here between the counsel and the Court regarding
23 the sentence the Court would impose. But anyway, let me
24 just kind of briefly go back and discuss those again.

25 He's got three firearms convictions. And he's an

1 individual who normally could not possess these firearms
2 based on a court order entered by Johnson County Circuit
3 Court. And even knowing he could not do that, he possessed
4 an arsenal of firearms that included fully automatic
5 weapons, silencers, and other firearms, along with
6 ammunition. And while it was illegal for him to possess
7 those, when you look at the firearms that he possessed and
8 you read the rhetoric that was captured from the seizure of
9 the Facebook records of the text messages and other
10 conversations, and also the information that was obtained
11 through the Title III wiretap, he had the ability to cause
12 some horrific crimes. He really did. And that's what
13 makes this case so serious, because even though it was just
14 a conviction for possession of firearms, when you take that
15 with the rhetoric that he engaged in, it was the recipe for
16 some serious, serious, horrific offenses.

17 Again, in 2019, that's when the FBI opened up
18 this investigation and obtained these Facebook chat
19 messages that had a lot of this information. One thing I
20 notice in going back through there, I don't know what the
21 period of time was for the subpoena of records, but when he
22 was interviewed, he said anybody -- a fool would think -- I
23 can't remember exactly how he said that. I was just kind
24 of astounded by that comment he made, "who does not think
25 I'm joking is just a real fool."

1 But nevertheless, these comments went on for a
2 long period of time. These weren't offhand comments that
3 were just made. They went on for a long period of time,
4 and that's of great concern to the Court as well. Also,
5 there was the discussion about setting off bombs like the
6 Oklahoma City bombing. Through his employment, he had
7 access to anhydrous ammonia, which could have been used to
8 manufacture a bomb. In fact, he discussed in some of these
9 chats about how to make bombs.

10 But in any event, the offense conduct in this
11 presentence report is laid out so well and gives the Court
12 so much information, I could discuss the nature and
13 circumstances for the rest of the day, which I'm not going
14 to do. But anyway, I do think that the nature and
15 circumstances of the offense dictate an upward variance.

16 The defendant's history and characteristics.
17 While the probation office does do a good job, of course
18 the information they put in the presentence report is based
19 on what he tells them. I think that his description, his
20 allocution here about his background and how he grew up
21 shows what a horrific background he had. And I think -- I
22 don't know that there's any question that the problems he
23 has today are a result of this background. He wasn't just
24 exposed intermittently to some problems. Apparently, this
25 was a difficult childhood throughout his entire childhood.

1 And the Court just hates to see this happen. And it
2 happens in a lot of cases and a lot of these defendants who
3 come to court have difficult childhoods. I think he's
4 probably had one of the more difficult childhoods I've seen
5 of any of the defendants that have been here.

6 I'd also say that the report that was prepared by
7 Pinnacle, I'm hopeful that Dr. Wallace's diagnosis and
8 comments regarding this particular defendant are accurate,
9 because if they are accurate, he does have some opportunity
10 or chance at rehabilitation. And also the Court believes
11 that Mr. Garfield is a very intelligent individual, so I
12 think he possesses the ability to be able to do something
13 about his return to society.

14 Again, the Court needs to impose a sentence that
15 shows seriousness of the offense and provides just
16 punishment, the need to protect the public from further
17 crimes. All those are taken into account in determining
18 the sentence. The need to avoid unwarranted sentence
19 disparities. The government made reference to the
20 terrorist guidelines and so forth. We're fortunate this
21 case never crossed that bright-line, but I think those to
22 some extent -- I'm not going to say necessarily overstate,
23 but doesn't accurately describe I think what the offense
24 conduct is here. I think that the presentence report does
25 a very good job of that.

1 So here's what I am going to do. I gave this
2 case a lot of thought before the sentencing hearing about
3 where this sentence would land. And after hearing
4 everybody, hearing the government, hearing the defendant,
5 it's going to land right where I thought it would land
6 before I entered the courtroom. But I wanted to hear from
7 everyone before, make sure that it kind of confirms. But
8 here's what I'm going to do.

9 I'm going to do upward variance. I'm going to
10 impose a term of imprisonment of 78 months. I think that
11 is sufficient, but not greater than necessary, to comply
12 with the goals of sentencing. That will be 78 months on
13 Count One, Count Two, and Count Three. And they will run
14 concurrently.

15 The Court will impose a term of three years on
16 each count, three years of supervised release on each
17 count. They are to run concurrently. And that term of
18 supervised release will contain two special conditions.

19 Number one, the defendant shall submit to
20 inpatient or outpatient mental health testing, evaluation,
21 counseling and/or treatment as deemed necessary and
22 directed by the United States Probation Office.

23 Number two, the defendant shall submit to a
24 search of his person, real and/or personal property,
25 residence, place of business or employment and/or vehicles

1 conducted by the United States Probation Office based upon
2 a reasonable suspicion of criminal activity or any
3 violation of a condition of supervised release.

4 The Court finds the defendant does not have the
5 ability to pay a fine, therefore, no fine will be imposed.
6 The Court will impose a special assessment of \$300, which
7 is mandatory and due immediately.

8 I also have here a final order of forfeiture that
9 forfeits the firearms. I've signed the final order of
10 forfeiture, which will be entered.

11 Mr. Pierce, do you know of any legal reason why
12 the sentence should not be imposed as stated?

13 MR. PIERCE: No, Your Honor.

14 THE COURT: Do you, Mr. Jennen?

15 MR. JENNEN: No, Your Honor. Just one thing
16 regarding the final order of forfeiture.

17 After the preliminary order was entered, the
18 government realized that one of the firearms in the
19 preliminary order -- that would be the Brownell -- there is
20 a statement on this in the final order. That was actually
21 the property of the government, and therefore, we are
22 dismissing the forfeiture as to that firearm.

23 THE COURT: Okay. I didn't fully understand you.
24 What now?

25 MR. JENNEN: The Brownell Model BRN-4 5.56

1 caliber M-16 firearm, the Court had entered a preliminary
2 order of forfeiture as to that firearm. However, after
3 entry of the preliminary order, the government realized
4 that that firearm actually was the property of the
5 government. It had been used in an undercover operation
6 and was not the property of the defendant, therefore --

7 THE COURT: Has it been deleted from this final
8 order?

9 MR. JENNEN: Yes.

10 THE COURT: Okay. That's fine.

11 MR. JENNEN: There is a statement in the final
12 order dismissing the forfeiture as to that firearm. But
13 nothing further, Your Honor.

14 THE COURT: Good. Then the sentence is imposed
15 as stated.

16 Mr. Garfield, you have a right to appeal your
17 conviction if you believe that your guilty plea was somehow
18 involuntary or there was some other fundamental defect not
19 waived by your guilty plea. You also have a statutory
20 right to appeal the sentence under certain circumstances,
21 particularly if you think it's contrary to law.

22 Any notice of appeal must be filed within 14 days
23 of the entry of the judgment. If requested, the clerk will
24 prepare and file a notice of appeal on your behalf. If you
25 cannot afford to pay the cost of appeal, you have the right

1 to apply to appeal *in forma pauperis*, which means you can
2 ask the Court to waive the filing fee, and under appeal,
3 you can apply for court-appointed counsel.

4 Mr. Jennen, now that the Court has imposed
5 sentence, are you going to move for dismissal of the
6 indictment?

7 MR. JENNEN: We so move, Your Honor.

8 THE COURT: The indictment will be dismissed.
9 Anything further from the government?

10 MR. JENNEN: No, Your Honor.

11 THE COURT: Anything further from the defendant?

12 MR. PIERCE: No, Your Honor.

13 THE COURT: The defendant will be remanded to the
14 custody of the United States Marshals and the Court will be
15 in recess.

16 (proceedings concluded)
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C E R T I F I C A T E

I, Paula K. Barden, CCR, RPR, RMR, Federal Official Court Reporter, in and for the United States District Court for the Western District of Arkansas, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 11th day of June 2021.



PAULA K. BARDEN, CCR, RPR, RMR #700
Federal Official Court Reporter
Western District of Arkansas